

General Information. Letter: Nexus questions generally may not be resolved by letter ruling.

February 10, 2005

Dear:

This is in response to your letter dated January 26, 2005, in which you request a Private Letter Ruling. Department of Revenue ("Department") regulations require that the Department issue only two types of letter rulings, Private Letter Rulings ("PLRs") and General Information Letters ("GILs"). PLRs are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. GILs do not constitute statements of agency policy that apply, interpret or prescribe the tax laws and are not binding on the Department. For your general information, the regulation governing the issuance of letter rulings, 2 Ill. Adm. Code Part 1200 regarding rulings and other information issued by the Department, can be accessed at the Department's website. That address is [www.revenue.state.il.us/legalinformation/regs/part1200](http://www.revenue.state.il.us/legalinformation/regs/part1200).

The nature of your question and the information provided require that we respond only with a GIL.

In your letter you state as follows:

I am requesting a private letter ruling regarding my income tax obligation to the state of Illinois. I am uncertain of my wife's and my residency status and need clarification.

We sold our home in the Nashville, TN area last June (2004) and bought a boat which we now live on full time. My wife and I are both nurses and we work and cruise along the Atlantic coast. We will get a 3-4 month contract in one part of the East coast and when that is completed we will move on to our next contract in another state. We anticipate doing this for the next 3-5 years.

In order to have a consistent/convenient address for our mail and bills to be sent to we use my sister's address in CITY, IL. We also had our 2 vehicles registered in Illinois to her address for convenience and insurance purposes, as well as our driver's licenses. We were in Illinois for only one week in June to visit and handle the paperwork. We do not have any income earned in Illinois, we have not lived in the state nor do we ever anticipate ever living in the state. But we did need an address somewhere to handle mail/autos/licenses. I am unclear if this alone makes us residents of the state or if we are still non residents with essentially a mail drop.

I also read somewhere on your web site that if a person is out of the state for a period of nine months? He may possibly not be considered a resident any longer. For the following tax year (2005) we will certainly exceed that time period since we will have never actually been in the state. Does that mean we would not be liable for Illinois income taxes for next year even if

we were liable for taxes this year?

In response to your inquiry, please be advised that, since the issue of residency is highly dependent on the specific facts of each case, the Department does not issue letter rulings to specific individuals regarding their residency status for tax purposes. However, we would be happy to provide you with some general information.

For purposes of Illinois income taxation, the term "resident" is defined to mean an individual who is in Illinois for other than a temporary or transitory purpose during the taxable year **or who is domiciled in Illinois but is absent from Illinois for a temporary or transitory purpose during the taxable year.** *Illinois Income Tax Act [IITA] Section 1501(a)(20).* (emphasis added).

Regarding "domicile", *IIT Reg. Section 100.3020 (d)* states as follows:

d) Domicile. Domicile has been defined as the place where an individual has his true, fixed, permanent home and principal establishment, the place to which he intends to return whenever he is absent. It is the place in which an individual has voluntarily fixed the habitation of himself and family, not for a mere special or limited purpose, but with the present intention of making a permanent home, until some unexpected event shall occur to induce him to adopt some other permanent home. Another definition of "domicile" consistent with the above is the place where an individual has fixed his habitation and has a permanent residence without any present intention of permanently removing therefrom. An individual can at any one time have but one domicile. If an individual has acquired a domicile at one place, he retains that domicile until he acquires another elsewhere. Thus, if an individual, who has acquired a domicile in California, for example, comes to Illinois for a rest or vacation or on business or for some other purpose, but intends either to return to California or to go elsewhere as soon as his purpose in Illinois is achieved, he retains his domicile in California and does not acquire a domicile in Illinois. Likewise, an individual who is domiciled in Illinois and who leaves the state retains his Illinois domicile as long as he has the definite intention of returning to Illinois. On the other hand, an individual, domiciled in California, who comes to Illinois with the intention of remaining indefinitely and with no fixed intention of returning to California loses his California domicile and acquires an Illinois domicile the moment he enters the state. Similarly, an individual domiciled in Illinois loses his Illinois domicile:

- 1) by locating elsewhere with the intention of establishing the new location as his domicile, and
- 2) by abandoning any intention of returning to Illinois.

What constitutes a "temporary or transitory purpose" is covered by IIT Reg. 100.3020(c), which reads:

- c) Temporary or transitory purposes. Whether or not the purpose for which

an individual is in Illinois will be considered temporary or transitory in character will depend upon the facts and circumstances of each particular case. It can be stated generally, however, that if an individual is simply passing through Illinois on his way to another state, or is here for a brief rest or vacation, or to complete a particular transaction, or perform a particular contract, or fulfill a particular engagement, which will require his presence in Illinois for but a short period, he is in Illinois for temporary or transitory purposes, and will not be a resident by virtue of his presence here. If, however, an individual is in Illinois to improve his health and his illness is of such a character as to require a relatively long or indefinite period to recuperate, or he is here for business purposes which will require a long or indefinite period to accomplish, or is employed in a position that may last permanently or indefinitely, or has retired from business and moved to Illinois with no definite intention of leaving shortly thereafter, he is in Illinois for other than temporary or transitory purposes, and, accordingly, is a resident taxable upon his entire net income even though he may also maintain an abode in some other state.

1) Example 1. X is domiciled in Fairbanks, Alaska, where he had lived for 50 years and had accumulated a large fortune. For medical reasons, X moves to Illinois where he now spends his entire time, except for yearly summer trips of about three or four months duration to Fairbanks. X maintains an abode in Illinois and still maintains, and occupies on visits there, his old abode in Fairbanks. Notwithstanding his abode in Fairbanks, because his yearly sojourn in Illinois is not temporary or transitory, he is a resident of Illinois, and is taxable on his entire net income.

AGENCY NOTE: If in the foregoing example, the facts are reversed so that Illinois is the state of original domicile and Alaska is the state in which the person is present for the indicated periods and purposes, X is not a resident of Illinois within the meaning of the law, because he is absent from Illinois for other than temporary or transitory purposes.

2) Example 2. Until the summer of 1969, Y admitted domicile in Illinois. At that time, however, to avoid the Illinois income tax, Y declared himself to be domiciled in Nevada, where he had a summer home. Y moved his bank accounts to banks in Nevada, and each year thereafter spent about three or four months in Nevada. He continued to spend six or seven months of each year at his estate in Illinois, which he continued to maintain, and continued his social club and business connections in Illinois. The months not spent in Nevada or Illinois he spent traveling in other states. Y is a resident of Illinois and is taxable on his entire net income, for his sojourns in Illinois are not for temporary or transitory purposes.

AGENCY NOTE: If, in the foregoing example, the facts are reversed so that Nevada is the state of his original domicile, and the state in which the person is present for the indicated periods and purposes, Y is not a resident of Illinois within the meaning of the law because he is absent from Illinois for other than temporary or transitory purposes.

3) Example 3. B and C, husband and wife, domiciled in Minnesota where they maintain their family home, come to Illinois each November and stay here until the middle of March. Originally they rented an apartment or house for the duration of their stay here but three years ago they purchased a house here. The house is either rented or put in the charge of a caretaker from March to November. B has retired from active control of his Minnesota business but still keeps office space and nominal authority in it. He belongs to clubs in Minnesota, but to none in Illinois. He has no business interests in Illinois. C has little social life in Illinois, more in Minnesota, and has no relatives in Illinois. Neither B nor C is a resident of Illinois. The connection of each to Minnesota, the state of domicile, in each year is closer than it is to Illinois. Their presence here is for temporary or transitory purposes.

AGENCY NOTE: If, in the foregoing example, the facts are reversed so that Illinois is the state of domicile and B and C are visitors to Minnesota, B and C are residents of Illinois.

With respect to residency in Illinois, IIT Reg. 100.3020(f) establishes the following presumptions:

f) Presumption of residence and nonresidence. If an individual spends in the aggregate more than nine months of any taxable year in Illinois it will be presumed that he is a resident of Illinois. **An individual who is absent from Illinois for one year or more will be presumed to be a nonresident of Illinois.** These presumptions are not conclusive, and may be overcome by other satisfactory evidence to the contrary. (emphasis added).

For nonresidents, this State only taxes income which is from Illinois sources pursuant to Article 3 of the IITA. The nonresident would generally classify income as business and nonbusiness income and then allocate nonbusiness income according to *IITA Section 303* and apportion business income using an apportionment formula according to *IITA Section 304* based upon receipts from sales in Illinois versus receipts from sales elsewhere.

Regarding compensation income, a nonresident would be subject to Illinois income tax on that income if the compensation was paid in Illinois under *IITA Section 304(a)(2)*.

In the situation you have described, and without making a binding ruling, it seems that the taxpayers' domicile would have been located in Tennessee, if anywhere, prior to the sale of the residential real estate. Accordingly, there would have been no Illinois domicile to lose under the presumption of IIT Reg. 100.3020(f). Furthermore, a one-week visit during 2004 to handle a few transactions and to see a relative would seem to constitute a temporary or transitory purpose within the State of Illinois and would not be sufficient to create a presumption of residency here. Using the state of Illinois, and a relative's house, as a matter of convenience for maintaining a mail drop, driver's licenses, and auto registration is probably insufficient evidence to establish domicile here in Illinois, given the taxpayers' stated intention to use their boat as their new domicile and the fact of their physical presence on the boat-house throughout the year.

As stated above, this is a GIL which does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department. If you wish to obtain a PLR which will bind the Department with respect to the application of the law to specific facts, please submit a request conforming to the requirements of 2 Ill. Adm. Code Part 1200.

Sincerely yours,

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